

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIMOTHY W. BRACCINI,

Plaintiff,

-against-

ANSWER

07 Civ. 2997 (SAS)
METRO-NORTH COMMUTER RAILROAD,

Defendant.

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Defendant, Metro-North Commuter Railroad (hereinafter referred to as "Metro-North"), by its attorney, Richard K. Bernard, Esq., as and for its answer to the complaint of the plaintiff, alleges as follows, upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) 1 of the complaint.
2. Denies upon information and belief each of the allegations contained in paragraph(s) 2 of the complaint and refers all questions of law and fact to judge and jury, except admits that Metro-North is a corporation duly organized and existing according to law.
3. Denies upon information and belief each of the allegations contained in paragraph(s) 3 of the complaint and refers all questions of law and fact to judge and jury, except admits that plaintiff was an employee of Metro-North.
4. As to the allegations contained in paragraph(s) 4 defendant refers all questions of law and fact to judge and jury.
5. Denies the allegations contained in paragraph(s) 5, 6 (a) – (c), 7 and 8 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. As and for a first affirmative defense, or as a defense in mitigation of damages, the defendant claims that any injuries allegedly sustained by the plaintiff were caused, in whole or in part, by reason of the culpable conduct of the plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. As and for a second affirmative defense, the defendant claims that the plaintiff's complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the defendant, Metro-North Commuter Railroad demands judgment dismissing the complaint, together with costs and disbursements and such other and further relief as to this Court seems just and proper.

Dated: New York, New York
May 15, 2007

RICHARD K. BERNARD
GENERAL COUNSEL

By: S/
José R. Rios – JRR/5785
Special Counsel
Attorneys for Defendant
347 Madison Avenue
New York, New York 10017
212-340-2537

TO: Michael H. Zhu, Esq.
Attorney for Plaintiff
14 Wall Street, 22nd Floor
New York, New York 10005
212-227-2245

STATE OF NEW YORK :
:ss:

COUNTY OF NEW YORK:

LAURA MATTHEWS, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in New York.

On May 15, 2007, I served a true copy of the annexed Answer and Rule 7.1 Statement, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: Michael H. Zhu, Esq.
Attorney for Plaintiff
14 Wall Street, 22nd Floor
New York, New York 10005
212-227-2245

S/
LAURA MATTHEWS

Sworn to before me this
15th day of May, 2007

S/
NOTARY PUBLIC

Braccini,TimothyW